

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN**

FEDERAL DEPOSIT INSURANCE  
CORPORATION, as Receiver for Guaranty Bank,

Plaintiff,

v.

OLD REPUBLIC INSURANCE COMPANY,

Defendant.

CIVIL ACTION NO. 17-

**NOTICE OF REMOVAL**

TO THE COURT AND ALL PARTIES AND THEIR COUNSEL OF RECORD:

Pursuant to 12 U.S.C. § 1819(b)(2)(B), the Federal Deposit Insurance Corporation (“FDIC”), an agency of the United States of America, in its capacity as Receiver for Guaranty Bank (hereinafter, the “FDIC-R”), hereby removes the entire above-captioned action from the Circuit Court for Milwaukee County, State of Wisconsin (“State Court”), to the United States District Court for the Eastern District of Wisconsin, and states as follows:

**I. BACKGROUND**

1. On or about September 1, 2009, this action was commenced when the Plaintiff, Guaranty Bank (“Guaranty”) filed in the State Court a complaint (“Complaint”) against Old Republic Insurance Company (“ORIC”). The State Court assigned Case Number 09-CV-13592 to this action. Guaranty subsequently filed an Amended Complaint on July 24, 2012 and a Supplemental Complaint on November 14, 2014. Generally speaking, Guaranty asserts claims in this action against ORIC alleging that ORIC has improperly denied claims in excess of \$7,000,000 that Guaranty submitted under two mortgage guaranty insurance policies issued by

ORIC insuring Guaranty against losses arising out of the borrowers' default of second mortgage loans (the "ORIC Policies"). In its Amended Complaint and Supplemental Complaint, Guaranty added claims for bad faith, theft by fraud, RICO, WOCCA (Wisconsin's version of RICO), and claims for violation of Wisconsin insurance laws and regulations. The theft by fraud, RICO and WOCCA claims seek multiple damages based upon allegations that ORIC fraudulently promised to insure all loans underwritten in accordance with underwriting guidelines that ORIC had sanctioned. The claims based upon violation of Wisconsin's insurance laws and regulations allege that ORIC violated such laws and regulations by, among other things, failing to file retroactive rating endorsements with the Wisconsin Commissioner of Insurance. As a result, these claims allege that ORIC cannot collect retroactive premiums under those endorsements and must repay retroactive premiums already paid.

2. On May 5, 2017, while this action was still being actively litigated, Guaranty was closed by the Office of the Comptroller of the Currency and the FDIC was appointed Guaranty's receiver.

3. By operation of federal law, the FDIC-R succeeded to all of Guaranty's rights, titles, powers, privileges, assets, and liabilities, including Guaranty's interests in the ORIC Policies and status as the Plaintiff in this action. *See* 12 U.S.C. §§ 1821(d)(2)(A) and 1821(d)(2)(B).

4. Based on the foregoing, on May 23, 2017, the FDIC-R filed in the State Court a Notice of Substitution of Party, a copy of which is attached hereto as Exhibit 1, notifying the State Court, parties, and attorneys of record, that effective on that date, the FDIC-R substituted into the place of Guaranty as the Plaintiff in this case.

## II. BASIS FOR REMOVAL

5. The above-captioned action is now removable pursuant to 12 U.S.C. § 1819(b)(2)(B).

6. The FDIC has a statutory right to remove cases pursuant to the Financial Institution Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, § 209, 103 Stat. 183 *et seq.*, codified in various sections of Title 12 of the United States Code. Specifically, 12 U.S.C. § 1819(b)(2)(B) states, in its relevant part, as follows:

### (B) Removal

Except as provided in subparagraph (D), the Corporation may, without bond or security, remove **any action, suit, or proceeding** from a State court to the appropriate United States District Court before the end of the 90-day period beginning on the date the action, suit, or proceeding is filed against the Corporation **or the Corporation is substituted as a party.**

12 U.S.C. § 1819(b)(2)(B) (emphasis added).

7. The instant Notice of Removal is timely under 12 U.S.C. § 1819(b)(2)(B). The FDIC-R was substituted as a party into this case on May 23, 2017. Therefore, this Notice of Removal is being filed two (2) days after said substitution, which is well within the 90-day period prescribed by 12 U.S.C. § 1819(b)(2)(B).

8. Venue properly lies with this Court pursuant to 28 U.S.C. §§ 1442(a) and 1446(a), as this action was pending in the State Court, which is located in this judicial district.

9. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all the essential process, pleadings, and Orders filed or issued in the State Court action are submitted herewith as Exhibits 2-59. However, because of the voluminous nature of the State Court Record, and because certain pleadings were filed under seal in the State Court, the FDIC-R is filing contemporaneously herewith separate expedited non-dispositive motions under Civil L.R. 7(h)

requesting leave to file an abridged State Court record, as well as to file certain pleadings under seal pursuant to General L.R. 79(d).

10. Pursuant to 28 U.S.C. § 1446(d), the FDIC-R will file in the State Court, and serve on all parties to this action, a copy of this Notice of Removal.

11. Pursuant to 12 U.S.C. § 1819(b)(4), the FDIC-R is exempt from paying a filing fee in connection with this removal.

### **III. CONCLUSION**

By this Notice of Removal, the FDIC-R intends no admission of fact, law or liability. The FDIC-R requests that this action be removed to this Court, that all further proceedings in the State Court be stayed, and the FDIC-R receives all additional relief to which it is entitled.

Dated: May 25, 2017

BECK, CHAET, BAMBERGER & POLSKY, S.C.  
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